



JOINT STAKEHOLDERS' SUBMISSION ON LEGAL INSTITUTION REFORMS ON CHILD PROTECTION IN KENYA BY THE CHILD RIGHTS CLUSTER OF THE KENYA STAKEHOLDERS' COALITION ON THE UNIVERSAL PERIODIC REVIEW
OCTOBER 2024



Submitted by:

Pendekezo Letu

Levis K. Kagiri

Kagiri@Pendekezo.onmicrosoft.com



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Introduction

1. This submission by the Child Rights Cluster of the Kenya Stakeholders Coalition on the Universal Periodic Review in Kenya provides an overview of the progress, challenges, and recommendations regarding child rights in Kenya since the previous Universal Periodic Review (UPR) cycle. This submission is a joint effort of 12 organizations in Kenya. The submission is informed by data collected from diverse stakeholders, including children, families, civil society organizations and service providers across Kenya. It reflects the coalition's concerns about the realization of children's rights, in alignment with international human rights commitments and the Sustainable Development Goals (SDGs).
2. Kenya has made commendable progress in certain areas, such as the enactment of laws to improve child protection, including the Children Act, 2022. The government's efforts to provide social safety nets for vulnerable families and initiatives to improve birth registration are also acknowledged. However, critical challenges continue to hinder the realization of child rights for all, especially marginalized groups such as children in street situations and children in contact with the law.
3. This submission focuses on 4 key issues:
 - i. **Hindrance by the justice system to accord to fair trial for children.**
 - ii. **Lack of an implementation framework to the Children Act 2022.**
 - iii. **Lack of access to social services for children in street situations.**
 - iv. **Lack of ratification of Optional Protocol II to the UNCRC on the sale of children, child prostitution and child pornography.**
4. We acknowledge the efforts made by the Government of Kenya in improving the situation of children, particularly in the area of child protection. However, significant gaps remain, and urgent action is needed to ensure that all children, especially the most vulnerable, fully enjoy their rights. This submission includes a series of recommendations aimed at addressing these gaps and promoting comprehensive measures to enhance the rights and welfare of children in Kenya.
5. We urge the Government of Kenya to prioritize the implementation of policies aimed at strengthening the child protection system, address systemic barriers to education, and ensure that children's voices are heard and included in decision-making processes that affect their lives.



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Issue 1: Hindrance by the justice system to accord fair trial for children

Summary of the issue

6. Children in the justice system in Kenya are faced with various challenges that hinder their attainment to quality access to justice. These include; lack of legal representation, lack of information, inordinate delay in their cases, children being held at police stations for a long period of time in contravention to the **Constitutional 24-hour** requirement and having to endure long trials amongst others.
7. In many courts in Kenya, children continue to lack legal representation due to the inadequate allocation of resources by the state to the Judiciary pro bono advocates scheme which supposed to facilitate advocates to undertake free legal representation of children in conflict with the law.
8. Empirical evidence suggests that thousands of these children come into contact with the Juvenile Justice System (JJS) where they are categorized as either children in conflict with the law, victims of abuse, or children in need of care and protection. Various reports¹ indicate that justice for children is an elusive concept and that by the time a children's matter is finalised, the child will have endured different forms of abuse and violations by various handlers including within the Judiciary².

Summary of the existing framework

9. The national legal and policy framework includes the Children Act 2022, and the provisions under article 53(1f)(2) of the Constitution of Kenya 2010, which guarantee the rights of children in conflict with the law. The Constitution of Kenya under article 48 provides that Access to Justice is a fundamental right and Article 53 encapsulates the rights of children and mandates that the best interest of the child shall be of paramount consideration. Article 159 of the Constitution of Kenya further mandates that as the Judiciary executes its functions, it shall ensure that justice is available to all, irrespective of their status and that it shall not be delayed.
10. In addition, the Children Act 2022, provides extensive obligations for the various child justice institutions, including the Judiciary, with the aim that justice for children in Kenya will not “only be done but manifestly seen to be done.” The Judiciary Child Justice Strategy also encompasses provisions of protection of children in the justice system.
11. In Kenya, the existing framework intended to ensure a fair trial for children within the justice system faces significant hindrances. Current statistics from the National Council on the Administration of Justice (NCAJ) indicate that a significant number of children in

¹ Reports such as the Status Report on Children in the Justice System, NCAJ Special Taskforce on Children Matters (2019) <https://jaslika.com/reports/2019/11/22/the-status-of-children-in-the-justice-system-in-kenya-vol-1>; An audit of the Criminal Justice System in Kenya, by NCAJ, LRF and RODI (2017)

² An audit of the Criminal Justice System in Kenya, by NCAJ, LRF and RODI (2017)



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conflict with the law do not receive timely trials. For example, over 60% of juvenile cases take longer than six months to resolve, far exceeding the recommended timeframes for juvenile justice. Furthermore, many children are held in police stations and remand homes for extended periods due to delays in the justice process, leading to prolonged exposure to potentially harmful environments.³

12. Additionally, the Kenya National Bureau of Statistics, 2022 Economic survey indicates that there are some 406 children serving a custodial sentence, while reported cases of violence against children have increased to 147,352.⁴ These statistics indicate that the justice institutions have to be cognizant of the plight of children and their welfare as they go through the treacherous journey of the “long arm” of the law.

Progress made in Kenya since the last UPR

13. Key developments since the last review include the establishment of specialized children's courts, a provision in Section 60 Children Act, 2022 which are designed to provide a more child-friendly environment for handling juvenile cases. Also, all magistrates nationwide have been gazetted to handle children matters, there are however specific children's courts gazetted and set aside for children matters in Nairobi at Milimani Children Court and Mombasa at Tononoka Children's Courts (2 out of 47) whilst other courts such as in Kisumu and Nakuru have taken the initiative to provide child friendly environments where justice may be administered to children.
14. The Judiciary has also enhanced the training of judicial officers, Law enforcement personnel and children officers to better understand and apply child justice principles. Pendekezo Letu for example, has collaborated with the Milimani Children court to provide such trainings to the child protection actors in Nairobi for the last 3 years. The Kenya Judiciary Academy in collaboration with partners such as UNDP has facilitated training of over 60 judicial officers from different counties and built their capacity for better understanding of the Children Act, 2022 These specialized trainings ensure that those involved in the children justice system are better equipped to handle cases involving children, respecting their rights and providing appropriate support.
15. Another significant advancement is the creation and equipment of child protection units within police stations. These units are tasked with handling cases involving children, ensuring that their interactions with the justice system are conducted in a manner that is sensitive to their needs and rights. Various civil society actors like Pendekezo Letu and Terres Des Hommes, UNODC, UNICEF, Equality Now, Plan International, Office of

³ Status Report on Children in the Justice System, NCAJ Special Taskforce on Children Matters (2019) <https://jaslika.com/reports/2019/11/22/the-status-of-children-in-the-justice-system-in-kenya-vol-1>; An audit of the Criminal Justice System in Kenya, by NCAJ, LRF and RODI (2017)

⁴ <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf> at page 389 - 391



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the Chief Justice, the Directorate of Children's Services, Witness Protection Agency, have supported in such initiatives.

16. Additionally, the National Council on the Administration of Justice (NCAJ) has introduced measures to reduce the time children spend in pre-trial detention, promoting alternative dispute resolution mechanisms and diversion programs to keep children out of the formal justice system whenever possible.
17. The ODPP has also developed and adopted Diversion Guidelines which have aided in the alternative resolution of children cases significantly reducing the amount of time spent by children in the justice system.
18. A positive example of these developments is seen in the Nairobi Children's Court, which now has dedicated facilities such as Child interview rooms and trained personnel to handle juvenile cases. This court has significantly reduced the backlog of children's cases, ensuring that more cases are heard and resolved promptly. Another example is the introduction of mobile courts in remote areas, making it easier for children in these regions to access justice without the need for long and arduous travel.
19. In November, the Annual Judiciary Service month is observed in November nationally for children matters in all court stations. The purpose is to facilitate and expedite the backlog of children matters, ensure that children have legal representation during the trial process and create awareness on children's rights amongst others.
20. Furthermore, the implementation of the Child Protection Information Management System (CPIMS)⁵ has improved data collection and case management, enabling more efficient monitoring and response to children's cases within the justice system. These steps demonstrate Kenya's commitment to enhancing the fairness and effectiveness of its juvenile justice system, aligning with international standards and recommendations from the UPR.

Recommendations

21. The Government should Implement/operationalize the Legal Aid Act 2016.
22. The Government should Implement the Children Act 2022 provisions on access to legal aid for children in conflict and contact with the law. – sharpen the rec
23. The Government should Progressively increase the budgetary allocation towards the probono advocates scheme in children courts.
24. The Government should Designation and gazettelement of more children courts in the other 45 counties.

⁵<https://data.childprotection.go.ke/#000/AAAA/2016/ALL>



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Issue 2: Lack of an implementation framework to the Children Act 2022

Summary of the issue

25. The lack of an implementation framework for the Children Act 2022, clear guidelines and establishment of structures has resulted in poor/ inadequate coordination among duty bearers and stakeholders as well inefficient delivery of services to children. This lack of coordination has resulted in inconsistent application of the law, leaving many children without the necessary support, services and protection mechanisms. In addition, this has also led to inadequate allocation of financial and human resources to empower and establish the institutions and structures envisioned by the Act.
26. The effects of this are profound including: children are left vulnerable, their access to justice is hindered, and their overall well-being is compromised. Data from the Kenya National Bureau of Statistics indicates that over 50% of children in Kenya experience some form of violence, yet less than 10% receive adequate support due to these systemic gaps. This situation underscores the urgent need for a comprehensive implementation framework to ensure the effective application of the Children Act 2022, safeguarding the rights and futures of Kenyan children.

Summary of the existing framework

27. The Children Act 2022 lacks a robust implementation, resourced and monitoring framework. The Act was designed to protect and promote the rights of children, aligning with the Constitution of Kenya 2010 and other international Treaties, Conventions and obligations. However, the lack of a clear and actionable implementation plan has led to significant challenges in actualizing these legal protections as there are no clear guidelines, no clear framework on resource allocation and monitoring mechanisms to enforce the Act effectively.
28. Current statistics underscore the impact of this gap. According to the Kenya National Bureau of Statistics,⁶ over 13 million children are at risk of various forms of abuse and neglect, with the government unable to provide adequate protection or support due to the lack of systematic implementation.

Progress made in Kenya since the last UPR

29. The delayed enactment of the Children Bill was an impediment to protecting and promoting the rights of children in Kenya. The enactment into law of the Children Act 2022 was however a significant milestone in ensuring children continue to enjoy their rights. To realize this further, the state should prioritize and allocate resources towards the development and adoption of an implementation framework of the Children Act 2022 and the finalization and gazettment of Rules and Regulations that will operationalize this law.

⁶ <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf>



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Recommendations

30. The Government should Develop, adopt and implement an implementation, resourcing and monitoring framework of the Children Act 2022.
31. The Government should Fast-track the development, adoption and gazettment of the Rules and Regulations of the Children Act 2022.

Issue 3: Lack of access to social services for children in street situations.

Summary of the issue

32. The lack of access to adequate social services in Kenya, particularly birth and identity registration for children in street situations, presents significant challenges. The failure to implement the recommendations from the 2018 Street Families Census Report has exacerbated these issues. Many children in street situations lack identity documents due to barriers such as the inability to meet the requirements for registration, lack of awareness, and bureaucratic inefficiencies. This lack of documentation denies children access to essential services. Consequently, these children remain marginalized and vulnerable to exploitation and abuse. According to the findings of the 2018 National Census of Street Families Report,⁷ shows that there were 46,639 street persons spread across the 47 Counties, children aged below 18 were 15,752 persons at 33.8%, many of whom are invisible to the system due to lack of registration. This invisibility perpetuates a cycle of poverty and vulnerability, highlighting the urgent need for implementing policies and recommendations to ensure that all children have access to social services and legal recognition.

Summary of the existing framework

33. The existing framework for providing access to social services, including birth and identity registration, for children in street situations is severely lacking in Kenya. The Constitution of Kenya 2010 under article 53 guarantees that every child has the right to a name and nationality from birth. The Children Act 2022, further emphasizes the protection and welfare of all children. Despite these legal provisions, the implementation of these rights remains inadequate, particularly for children in street situations.
34. The major hindrance is the lack of a comprehensive and coordinated approach to address the unique needs of children in street situations. The 2018 Street Families Census Report highlighted the plight of street children and recommended specific interventions, but these recommendations have not been fully implemented. Bureaucratic inefficiencies, lack of political will, and insufficient resource allocation are key causes behind the failure to provide these essential services.

⁷ <https://sftrf.socialprotection.go.ke/achievements/national-census-report/>



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35. The Kenya National Bureau of Statistics indicates that only about 60% of children are registered at birth, with the rate significantly lower among street children.⁸ This lack of registration denies them access to critical services such as education, healthcare, and legal protection.
36. Additionally, the government of Kenya has increased the cost of acquiring birth certificates and identity documents by over 300% making it unaffordable and inaccessible by children in street situations.⁹

Progress made in Kenya since the last UPR

37. Some of the notable advancements on access to social services by children in street situations since Kenya's last review include the establishment and expansion of targeted programs aimed at addressing the needs of these vulnerable children. One significant development is the increased collaboration between government agencies and non-governmental organizations (NGOs) to provide essential services such as birth and identity registration, healthcare, and education.
38. The state led national digital biometric registration system drives dubbed Huduma Namba and Maisha Namba initiatives, have also made a significant impact. These systems simplify the process of obtaining identity documents and ensures that children and youth in street situations can be recognized and access government services more easily. The initiatives have been instrumental in reducing bureaucratic barriers and increasing the efficiency of the registration process.
39. The enactment of the Children Act 2022 is also a key milestone in the protection of children in street situations by recognition of children in street situations as children in need of care and protection and therefore requiring state support.
40. The Street Families Rehabilitation Trust Fund has also developed a draft national policy on rehabilitation of street families aimed at providing a framework to guide and coordinate rescue, rehabilitation, reintegration, re-socialization and prevention interventions for street families for improved service delivery.

Recommendations

41. The Government should implement the street families 2018 census report recommendations.
42. The Government should waive the exorbitant birth and identity registration charges for children and youth in street situations.
43. The Government should develop and implement an implementation framework for the Children Act 2022.

⁸ <https://www.knbs.or.ke/wp-content/uploads/2022/05/2022-Economic-Survey1.pdf>

⁹ Gazette Notice No. 15239



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Issue 4: Lack of ratification of Optional Protocol II to the UNCRC on the sale of children, child prostitution and child pornography.

Summary of the issue

44. The lack of ratification of Optional Protocol II to the UNCRC on the sale of children, child prostitution, and child pornography by Kenya continues to hinder the country's commitments towards enhancing child protection. The primary problem is the lack of political will to prioritize and address these grave violations. This reluctance stems from various causes, including competing political priorities, limited resources (rephrase). The effects are far-reaching and detrimental: without ratification, Kenya lacks adequate structures necessary to combat the sale of children, child prostitution, and child pornography effectively. This gap hinders national efforts to address these crimes, leaving children vulnerable to exploitation and abuse. The absence of ratification undermines international cooperation and support, further exacerbating the problem. To safeguard children's rights and enhance protection measures, Kenya must demonstrate political commitment by ratifying and implementing the UNCRC Optional Protocol II on the sale of children, child prostitution, and child pornography.

Summary of the existing framework

45. The Children Act 2022, the Sexual Offences Act 2006, and various provisions under the Penal Code, criminalize child exploitation and abuse in Kenya. However, lack of ratification of the Optional Protocol II to the UNCRC on the sale of children, child prostitution and child pornography, these legal instruments lack the comprehensive international standards and mechanisms necessary for effectively combating these heinous crimes.

46. Kenya misses out on critical international cooperation, guidance, and support that could enhance its capacity to combat the sale of children, child prostitution, and child pornography. As a result, these crimes continue to thrive, with perpetrators often escaping justice. According to a 2022 report by ECPAT International,¹⁰ an estimated 10,000 children in Kenya are victims of sexual exploitation, with many cases going unreported or inadequately addressed due to gaps in the legal framework.

Progress made in Kenya since the last UPR

47. In the previous cycle, Kenya was recommended under the following recommendations 142.1, 142.2, 142.3 and 142.4.

¹⁰ https://www.end-violence.org/sites/default/files/2022-12/DH%20Kenya%20Report_Revised30Nov2022.pdf at page 7-9



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48. One significant advancement is the enhancement of the legal and policy framework through the enactment of the Children Act 2022 which identify various forms of abuse including sexual abuse against children.
49. Kenya has also increased its efforts to tackle child trafficking and exploitation through various initiatives such as the development and adoption of the National Plan of Action to Tackle Online Child Sexual Exploitation and Abuse in Kenya 2022 – 2026¹¹, the National Prevention and Response Plan on Violence against Children in Kenya¹² which includes specific measures to address online sexual exploitation, is currently being actively implemented. This plan involves coordination between government agencies, NGOs, and international partners to provide better protection and support for children against the vice.
50. In terms of practical measures, the establishment of the Anti-Trafficking in Persons Advisory Committee and the launch of the National Referral Mechanism for the protection and assistance of trafficked persons have been crucial. These bodies work to improve the identification, protection, and support for children who are victims of trafficking and exploitation.

Recommendations

51. The Government should Ratify the Optional Protocol II to the UNCRC on the sale of children, child prostitution and child pornography.

¹¹ <https://www.nccs.go.ke/sites/default/files/resources/National-Plan-of-Action-to-Tackle-Online-Child-Sexual-Exploitation-and-Abuse-in-Kenya-2022-2026.pdf>

¹² <https://www.socialprotection.go.ke/sites/default/files/Downloads/National-Prevention-Response-Plan-on-VAC-WEB-v5-July-3-2020.pdf>